



Mutual Aid Specialist Committee Findings and Recommendations

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(For SEMS Technical Group Approval)

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Mutual Aid Specialist Committee Recommendations

Purpose

The SEMS Technical Group directed the formation of a Mutual Aid Specialist Committee to address the concerns and issues of mutual aid. This paper documents the findings of the committee, proposes a recommended course of action, and summarizes the status of mutual aid under the Master Mutual Aid Agreement (MMAA) and related mutual assistance programs.

Methods

The Mutual Aid Specialist Committee consists of representatives of state and local emergency response agencies that have experience in mutual aid. The committee met five times and was instrumental in the development of the issues and recommendations contained in this paper.

Findings

The Committee has determined that there are policy and legal issues regarding how “mutual aid” is practiced in the Operational Area. This is a result of emerging mutual aid systems involvement of private resources in emergency response, the rising costs of emergency response, and the use of costly specialized resources.

These issues need to be addressed in order to ensure the continuity of a fully functional emergency management system.. However, the resolution of these issues is at a policy level and therefore beyond the charge of the committee.

Policy Direction

Blue ribbon panel

The Mutual Aid Specialist Committee recommends that:

- 1) The Director of the Governor’s Office of Emergency Services establish a “blue ribbon panel” of policy-makers representing:
 - California Fire Chiefs’ Association
 - California Police Chiefs’ Association
 - California State Sheriffs’ Association
 - Emergency Medical Services Authority

- California Emergency Services Association
 - California Department of Forestry and Fire Protection
 - FIREScope
 - California Special Districts Association
 - California Highway Patrol
 - Department of Toxic Substances Control
 - Department of Fish and Game
 - Department of Health Services
 - Department of Justice
 - Police Office Standards and Training (POST)
 - County Emergency Managers (1 rural and 1 large metropolitan)
 - City Emergency Manager
- 2) The panel needs to review the issues and provide direction on the appropriate resolution to the SEMS Advisory Board.

Options

Policy Options

The committee identified four options that require a policy decision to implement:

1. Amend the Master Mutual Aid Agreement;
2. Adopt a policy that the State pays the cost of mutual aid;
3. Address the reimbursement concerns through legislation.
4. Do nothing

The panel may also choose another option or a combination of options.

Option 1: Amend the MMAA

There are three possibilities under this option they include amending the language in the MMAA as follows:

(3) It is expressly understood that this agreement and the operational plans adopted pursuant thereto shall not supplant existing agreements between some of the parties hereto providing for the

exchange or furnishing of certain types of facilities and services on a reimbursable, exchange, or other basis, but that the mutual aid extended under this agreement and the operational plans adopted pursuant thereto, shall be without reimbursement ~~unless otherwise expressly provided for by the parties to this agreement~~, beyond reasonable agreed costs of the requesting and receiving parties, or as provided in Sections 1541, 1586, and 1587, Military and Veterans Code; and that such mutual aid is intended to be available in the event of a disaster of such magnitude that it is, or is likely to be beyond the control of a single party and requires the combined forces of several or all of the parties to this agreement to combat.

Or amend the MMAA to read:

(3) It is expressly understood that this agreement and the operational plans adopted pursuant thereto shall not supplant existing agreements between some of the parties hereto providing for the exchange, or other basis, but that the mutual aid extended under this agreement and the operational plans adopted pursuant thereto, shall be without reimbursement ~~unless otherwise expressly provided for by the parties to this agreement~~ except that the individual parties may execute written agreements with one another for specific resources and reimbursement of costs or as provided in Sections 1541, 1586, and 1587, Military and Veterans Code; and that such mutual aid is intended to be available the event of a disaster of such magnitude that it is, or is likely to be beyond the control of a single party and requires the combined forces of several or all of the parties to this agreement to combat.”

Or amend the MMAA to establish a cap on the number of free hours of assistance available.

Pro

This is the most direct method of either allowing for reimbursement or limiting the costs of jurisdictions that provide mutual aid.

Con Any changes in the MMAA would require agreement from the original signatories. This would involve over 500 separate jurisdictions that include all 58 counties, plus cities and special districts. It is highly unlikely that all original signatories, plus any new jurisdictions would all agree on the same changes. Without complete agreement the effort would only serve to undermine the existing MMAA.

Option 2: Adopt a policy that the State pays the cost of mutual aid.

Under this option jurisdictions providing mutual aid would submit a bill to OES for their costs of providing mutual aid during federal or state declared disasters. OES would reimburse the agency based on existing NDAA and FEMA regulations.

Pro This could ensure effective use of mutual aid under the conditions for which the MMAA was designed. Under a federally declared disaster OES would be able to be reimbursed from FEMA. Under a state disaster proclamation OES could be reimbursed under NDAA.

Con Under existing rules and laws reimbursement for mutual aid could be provided for extraordinary costs that would include per diem and overtime. This could fall short of 100 per cent reimbursement for mutual aid. This could involve additional costs to OES. Under a state declaration OES could recoup part of the reimbursement. Under a local declaration, in the absence of a state or federal, or a condition of local peril there is no legal authority for OES to provide reimbursement for mutual aid.

Option 3: Address the reimbursement concerns through legislation

This option would involve crafting legislation to ensure reimbursement for mutual aid costs.

Pro Theoretically, this option offers the most promise for modifying the MMAA to permit reimbursement.

Con It is doubtful that legislation could amend a written agreement (or contract) that predates the Emergency Services Act. This option is also very political.

Option 4: Do Nothing

This option would accept conditions as they exist today.

Pro

Under this option any existing agreements that conflict with the MMAA would continue to conflict. The MMAA would remain intact.

Con

Any agreements that address reimbursement as a condition of providing aid could be challenged in court and rendered null and void.

Findings of the Mutual Aid Specialist Committee

Purpose

This paper was developed at the direction of the SEMS Mutual Aid Specialist Committee to describe existing mutual aid and assistance programs. It is intended to identify issues associated with the differences between the Master Mutual Aid Agreement and its application as well as, other forms of mutual assistance.

Status of Mutual Aid/Assistance Systems/Agreements

Mutual Assistance/Aid Table

See the attached table for details of the Master Mutual Aid Agreement under various conditions.

MMAA

The Master Mutual Aid Agreement (MMAA), signed in 1950 by all counties and most cities, provides the basis for the concept of “mutual aid” in California. It operates on the premise of providing assistance in times of “local peril” without the expectation of reimbursement. Through legislation (Government Code §8607) and regulation (CCR § 2400) the MMAA has been incorporated into the Standardized Emergency Management System and the Emergency Services Act (§8561, 8615-8619).

Automatic Aid

This is a generic term for mutual aid agreements that provide mutual assistance during normal day-to-day conditions that may or may not include “conditions of extreme peril” or declared emergencies. This usually involves providing assistance for a limited period of time at no cost to the receiving party. This type of agreement works under conditions that would not warrant the implementation of the MMAA. This type of agreement is common in the fire services, and is also used for other disciplines.

State Fire and Rescue Mutual Aid Plan

This is a state-wide integrated system that utilizes the six OES Mutual Aid Regions and Operational Area Fire and Rescue Coordinators to coordinate and obtain the most appropriate fire agency controlled resources.

Local Mutual Assistance Agreements

Mutual Aid under this plan is provided without expectation of reimbursement, but reimbursement may occur under specific circumstances.

There are also local assistance agreements (sometimes incorrectly called “local mutual aid”). These agreements may take the form of:

1. **Automatic Aid** (pre-programmed response) is designed to automatically dispatch/respond the closest available resources to neighboring agencies, regardless of political jurisdiction. They are “planned responses”. These agreements are often referred to as “Seamless Boundary Agreements”. The responses are usually between adjoining jurisdictions and for a short duration. The agreements, including operating plans, are formal written

agreements between the parties involved and are usually reviewed on an annual basis to assess the “balance of trade”. Usually no money changes hands, just a simple trade of response services (i.e., a closer company in one jurisdiction in exchange for another agency’s apparatus that is closer). However, trades for services (rather than responses) may occur, such as specialized equipment responses for training tower time, training classes/courses, etc.

2. **Local Mutual Aid** (not pre-programmed) is usually within an Operational Area, or between adjacent Operational Areas, and is for a short duration (usually one operational period or less). This agreement is used for those unplanned and unusually large incidents that temporarily exceed the local agency’s resources. Responses may be to support the incident itself, and/or to cover open stations in the effected agency. Although these responses are usually free (modeled after the State Master Mutual Aid Agreement with no local written agreement), some expendable supplies and materials may be reimbursed to make the assisting agency whole again, such as replacement for foam and certain Haz Mat items that may have been used. This is especially true if cost reimbursement is received by the requesting agency.
3. **Local Direct Protection Agreements** consist of the direct cash payment to another agency for protection. They are formal written agreements that are reviewed and negotiated on a regular basis. Some examples include the protection of a county island surrounded by another jurisdiction, wildland fire protection, or Haz Mat to a local government agency/city who does not have this response capability, airport crash fire rescue, off-shore oil islands, etc.

Other Forms of Fire Service Agreements

Fire agencies have also developed assistance agreements to meet the unique conditions of wildfire responses.

Cooperative Agreement for Local Government Fire Suppression Assistance (“5 Party Agreement”)

During time of severe wildfire conditions the forest agencies (U.S. Forest Service, Bureau of Land Management, and National Park) may have a need for emergency apparatus to provide structural protection or to supplement their respective agency-controlled resources to aid in the suppression effort. *The Cooperative Agreement for Local Government Fire Suppression Assistance* (“5 Party Agreement”) is the instrument that endorses this cooperation. The agreement makes the Governor’s Office of Emergency Services, and/or various local government emergency apparatus, available for dispatch and use through the *State Fire & Rescue Mutual Aid System* to the forest agencies. Reimbursement begins 12 hours after the initial assignment. If the response lasts less than 12 hours, there is no reimbursement.

The “5 Party Agreement” allows the forest agencies to tap into the pool of available resources through the *State Fire & Rescue Mutual Aid System*.

***Cooperative Fire
Protection Agreement
 (“4 Party Agreement”)***

This (referred to as the 4 Party Agreement) is an agreement between the California Department of Forestry and Fire Protection, U.S. Forest Service, Bureau of Land Management, and the National Park Service (collectively known as Forest Agencies) that addresses their common interests. Under this agreement state and federal agencies provide assistance in suppression of wildland fires on lands adjacent to each other. These lands are referred to as the Direct Protection Area (DPA). DPA is an area delineated by boundaries regardless of statutory responsibility. The protection is assumed by administrative units of either the federal agencies or the state. The agency with the direct protection responsibility, known as the Protecting Agency, has assumed both fire suppression and fiscal responsibilities as agreed.

Most of these agreements have assistance for hire clauses. This is particularly the case between federal agencies and local government.

***Public Works Mutual Aid
Agreement***

This system was initiated in the 1980s in southern California to provide construction equipment personnel and resources to disaster impacted areas. The agreement covered 17 of the 58 counties and a total of 130 cities. It uses the statewide mutual aid system for implementation, is voluntary and requires reimbursement by the requesting jurisdiction. The plan has never been implemented.

***California Mental Health
Emergency Mutual Aid
Plan***

The parties to this agreement are the State Department of Mental Health, County and city Mental Health agencies within the existing OES Mutual Aid Regions and the American Red Cross. This plan is modeled after the MMAA and requests for services are channeled through the SEMS structure. The plan is designed for disaster response mental health counselors. The draft plan is dated June 28, 1993, and was never finished. Counties have provided resources based on staff availability. FEMA has provided funding for crisis counseling, as covered by the Stafford Act.

***Water Agency Response
Network (WARN) Omnibus
Mutual Aid Agreement***

The resources under this agreement are available to all water agencies, public and private, within the State of California. It provides assistance in the form of personnel, supplies and equipment. It can be accessed through one of the participating water agencies or under disaster conditions involving more than one county, through the OES Regional Emergency Operations Center. Personnel, supplies and equipment are lent on a fee basis within 24 hours after receipt of an oral or written request. Assistance is available for emergency work only and is voluntary. The “borrower” is expected to reimburse the providing agency. This

system has been in place since the 1980s and has been used on a day-to-day basis and during a number of disasters that have occurred since Loma Prieta.

Law Enforcement Mutual Aid Plan

Law Enforcement Mutual Aid is a subset of the MMAA. It utilizes the SEMS structure for requesting and providing mutual aid on day-to-day basis and under disaster conditions. The system consists of city police departments, county sheriffs representing the Operational Areas, a Regional representative for the seven mutual aid regions (who is elected by the Operational Area representatives), and OES Law Enforcement Branch who coordinates state agency law enforcement resources in conjunction with the Regional and Operational Area resources. The mutual aid regions are identical to the Fire and Rescue regions with the exception of Region 1 which is divided into two regions: Region 1 which includes Los Angeles and Orange Counties and Region 1A which consists of the counties of San Luis Obispo, Santa Barbara and Ventura.

The nature of law enforcement operations is usually of a short duration. There is daily assistance provided from one agency to another for short periods of time from minutes to an hour or two. Assistance beyond a few hours to a period of days is much less common. Assistance is provided without cost or expectation of reimbursement and is fairly routine.

Annexes to the Law Enforcement Mutual Aid Plan include Search and Rescue and Coroner's plans. Law Enforcement Mutual Aid is provided on a day-to-day need as well as during disaster scenarios. Reimbursement for Search and Rescue is available from the search victim or the search victim's resident county. Reimbursement for other forms of Law Enforcement Mutual Aid has been available for declared disasters through NDAA and FEMA (Stafford Act).

Inter-Region Cooperative Agreement for Emergency Medical and Health Disaster Assistance

This agreement was developed between and among the eleven counties of OES Mutual Aid Regions I and VI. Similar agreements are being developed by other regions. It is designed to provide for medical personnel, equipment and supplies in times of potential calamity capable of producing casualties that overwhelm the local ability to contain and control. The agreement applies to both public and private medical resources. Requesting agencies bear the financial responsibility for costs associated with a response. The plan has never been activated.

Emergency Managers' Mutual Aid Agreement (EMMA)

Following the Northridge Earthquake of 1994, local emergency managers developed EMMA to provide local emergency management assistance during disasters. The program was initially implemented during the recovery phase of the Northridge earthquake and was formally adopted by the California Emergency

Council in 1997. Implementation procedures were recently completed. Reimbursement is not addressed in either the plan or procedures.

***Safety Assessment
Program (SAP)***

Following a series of earthquake events in the late 1980s and early 1990s, the Governor's Office of Emergency Services in cooperation with the California Association of Building Officials (CALBO) and private engineers developed what has become the Safety Assessment Program. This program provides engineering expertise to determine the safety of structures following a disaster. The program was initially developed for earthquakes but is applicable to other disaster scenarios as well. The program allow for the first 12 hours of assistance from private sector resources at no cost, with the receiving jurisdiction providing per diem. The services of the public building officials are provided at cost to the requesting jurisdiction.

Principle Issue

The Mutual Aid Specialist Committee identified a number of issues requiring analysis. They are as follows:

Background

The MMAA was signed by all counties and the majority of cities in 1950. Since that time, the costs associated with providing assistance have resulted in the development of the variety of agreements described above. Conflicts remain over payment for assistance and interpretation of the MMAA.

Legal Interpretation

Per Attorney General's informal advice -

- Under the MMAA, mutual aid "shall be without reimbursement unless otherwise expressly provided for by the parties" to the MMAA.
- At a minimum, the MMAA is invoked anytime a situation of peril exists or there is an emergency declaration at the local government level.

Therefore:

- a) true mutual aid must be initially provided without expectation of reimbursement irrelevant of the amount of time for which the services are provided.
- b) an entity may be reimbursed for their mutual aid services after the fact.
- c) "a" and "b" can only be abrogated if all the parties to the MMAA agree.

Implications

If parties act inconsistently with the legal points above, if challenged (sued) the results may be:

- 1) a party will be able to void their obligation to pay pursuant to an agreement.
- 2) liability protections provided by the MMAA will not protect the parties, thus exposing the party to financial damages.
- 3) violation of the Standardized Emergency Management System (SEMS) regulations, due to the inclusion by regulation of the MMAA into SEMS.

Practical Situation

- Some agreements in the fire service, when activated concurrently with MMAA, may be inconsistent with the law, e.g., automatic aid agreement when used during a situation of local peril, if they address reimbursement.
- Some emergency services disciplines (e.g., emergency medical) may be prevented from developing agreements for mutual aid, if those agreements address reimbursement.
- The MMAA addresses public resources only. Some emergency medical agreements include a public and private mix, with reimbursement clearly stated.
- Reimbursement may be essential to the existence of interjurisdictional sharing of resources, e.g., medical, hazardous materials, public works, etc.
- FEMA has indicated that lack of a reimbursement requirement under MMAA may allow them to deny some claims for reimbursement under the Stafford Act.

Related Issues

Issue A:

Can signatories to the MMAA enter into other agreements that do not require reimbursement.

Under the MMAA, political subdivisions (counties, cities and special districts) cannot make side agreements for reimbursement for those situations covered by the MMAA unless all other signatories to the MMAA agree. This could involve agreements between two jurisdictions for sheltering, law enforcement and fire and rescue. Agreements may exist and be operable on a day-to-day basis and under the MMAA. Per the MMAA, paragraph 3, "... the mutual aid extended under this agreement and the operational plans adopted pursuant thereto, shall be without reimbursement unless otherwise expressly provided for by the parties to this agreement..."

Issue B:

The MMAA states that mutual aid under MMAA "shall be without reimbursement unless otherwise expressly provided for by the parties to this agreement." Then how can "mutual aid" be reimbursed?

Since the MMAA is part of the Standardized Emergency Management System (SEMS), such agreements implemented during "conditions of extreme peril", or declared emergencies could also be viewed as a violation of SEMS and present compliance concerns.

State assistance under the Natural Disaster Assistance Act is funded based on disaster specific appropriations by the legislature. Although appropriated for many disasters, it is not a given that it will always exist.

An issue has been raised that parties to the MMAA have no obligation to pay, so neither does FEMA.

Issue C: ***Are contracted services (public and/or private) considered resources under the MMAA.***

Some jurisdictions may have contracts for private sector resources such as ambulance, park patrols, refuse disposal, etc. In some instances these may be mixed with public sector resources, as may often occur in ambulance services. The concept of a baseline of service may not be clearly defined for some of these services, therefore, during “conditions of extreme peril” or a declared disaster, there may actually be an ability to provide mutual aid upon request without unreasonably depleting resources.

Issue D: ***Does liability protection under the ESA extend to private sector resources. (Addresses original issue # 4 in attachment)***

The Emergency Services Act applies to political jurisdictions. Private sector resources, such as ambulances who are contracted with cities and counties, bear the responsibility for their own liability protection. Many local governments are self-insured. When private sector resources are provided under MMAA to another jurisdiction the contractor assumes liability for its own actions.

Issue E: ***It is unclear when a jurisdiction has unreasonably depleted its resources for the purpose of mutual aid. (Addresses original issue 5 in Attachment)***

The MMAA states that no party is required to deplete their resources. The MMAA further implies that mutual aid is mandatory during “conditions of extreme peril” or a declared disaster.

Section (4) of the MMAA states:

*It is expressly understood that the mutual aid extended under this agreement and the operational plans adopted pursuant thereto shall be available and furnished in all cases of conditions of extreme peril or emergency and in all cases of which a **State of Extreme Emergency** has been proclaimed.*

Section (2) of MMAA also states:

.. no party shall be required to deplete unreasonably its own resources, facilities, and services in furnishing such mutual aid.

This is a judgment call. However, Section 8655 of the Government Code does provide a fine of \$1,000 dollars and/or six months imprisonment for “persons violating or neglecting to obey a lawful order or regulation.” This may apply to those not willing to provide mutual aid. Finances are not a valid reason for denying mutual aid per the wording of the MMAA; mutual aid shall be provided without the expectation of reimbursement.

Conclusions

The committee concurred that any remedy to address the issues of Mutual Aid were not within their reach because they involved policy direction.

Attachment

MUTUAL ASSISTANCE/AID TABLE

	SITUATION	AUTHORITY	AGREEMENTS	PARTIES	OBLIGATION	REIMBURSEMENT AS A CONDITION OF PROVIDING AID	REIMBURSEMENT SOURCES
MUTUAL ASSISTANCE	Day-to-day event	Statute; regulation; ordinance	Contracts; MOU's; plans	Federal/state/local government/private; government/private; private/private *	As defined in agreement or statute.	Allowed	Parties to agreement
MUTUAL AID	Local Peril or Emergency, MMAA, Section (3): Disaster of such magnitude that it is, or is likely to be beyond the control of a single party and requires the combined forces of several or all of the parties to this [Master Mutual Aid] agreement to combat	Emergency Services Act (ESA); Master Agreement (MMAA) **	Mutual Aid agreement and/or plan	State and local government	MMAA, Sec. (2 & 4): Shall be available and furnished; not required to unreasonably deplete own resources. ESA, Sec. 8617/8632: State agencies/local govt. have authority to exercise mutual aid powers. State--At Governor's direction	MMAA, Section (3): Not allowed unless provided for by the parties to the MMAA.	Can bill requester; requester not obligated to pay. Shall be without reimbursement unless expressly provided by the parties of this agreement. ESA, Section 8633: Legal charge against state when approved by Governor.
MUTUAL AID	Local Emergency Declaration, ESA Sec. 8558(c): Conditions of disaster/extreme peril to the safety of persons/property w/in the territorial limits of a city/county; beyond control of the local government; require combined forces of political subdivisions.	Emergency Services Act (ESA); Master Mutual Aid Agreement (MMAA) **	Mutual Aid agreement and/or plan	State and local government	MMAA, same as above. ESA, Sec. 8631/32: Local govt. has full power to provide mutual aid in accordance w/local ordinances, etc. State agencies may provide mutual aid.	MMAA, Section (3): Not allowed unless provided for by the parties to the MMAA.	Can bill requester; requester not obligated to pay. ESA, Section 8633: Legal charge against state when approved by Governor.

* Federal government; private sector; and local governments not signatory to the MMAA can use "mutual assistance" under any emergency situation. However, under a state of war emergency, all local governments must follow lawful orders of the Governor.

** It should be noted that the Standardized Emergency Management System (SEMS) regulations provide for mutual aid that is consistent with the MMAA (SEMS regs. Section 2415).

MUTUAL ASSISTANCE/AID TABLE

	SITUATION	AUTHORITY	AGREEMENTS	PARTIES	OBLIGATION	REIMBURSEMENT AS A CONDITION OF PROVIDING AID	REIMBURSEMENT SOURCES
MUTUAL AID	State of Emergency, ESA Sec. 8558(b): Conditions of disaster/extreme peril to the safety of persons/property w/in the state; beyond control of the local government; require combined forces of mutual aid region(s).	Emergency Services Act (ESA); Master Mutual Aid Agreement (MMAA) **	Mutual Aid agreement and/or plan; State Emergency Plan	State and local government	<u>MMAA</u> , same as above. <u>ESA, Sec. 8616:</u> Aid shall be rendered in accordance w/approved emergency plans.	<u>MMAA, Section (3):</u> Not allowed unless provided for by all parties to the MMAA.	Can bill requester; requester not obligated to pay. Legal charge against state.
	State of War Emergency, ESA Sec. 8558(a): Condition exists immediately whenever the state or nation is attacked or upon receipt of a warning from the federal government that enemy attack is probable or imminent.	Emergency Services Act (ESA); Master Mutual Aid Agreement (MMAA) **	Mutual Aid agreement and/or plan; State Emergency Plan	State and local government	<u>MMAA</u> , same as above. <u>ESA, Sec. 8616:</u> Aid shall be rendered in accordance w/approved emergency plans. <u>ESA Sec. 8621:</u> Every department/employee of state/local govt. shall comply with lawful orders of the Governor.	<u>MMAA, Section (3):</u> Not allowed unless provided for by all parties to the MMAA.	Can bill requester; requester not obligated to pay. Legal charge against state.
	Federal Emergency/Major Disaster, Stafford Act Sec. 5170/5191: Beyond capabilities of state/affected local govts; federal assistance necessary.	Emergency Services Act (ESA); Master Mutual Aid Agreement (MMAA); Stafford Act **	Mutual Aid agreement and/or plan; State Emergency Plan; Federal Response Plan	Federal/state/local government	<u>MMAA</u> , same as above. <u>ESA, Sec. 8616:</u> Aid shall be rendered in accordance w/approved emergency plans. <u>Federal Response Plan, Section II. C.:</u> Will provide federal response assistance based on state-identified priorities.	<u>MMAA, Section (3):</u> Not allowed unless provided for by all parties to the MMAA.	Can bill requester; requester not obligated to pay. Legal charge against state.
MUTUAL AID/FEDERAL RESPONSE							